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BEFORE

**ACCEPTED**  
Legal 203 3-2-00

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket No. 1999-377-C

S. C. PUBLIC SERVICE COMMISSION  
**RECEIVED**  
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United Telephone Company of the Carolinas,	)
	)
	)
Complainant	)
	)
v.	)
	)
BellSouth Telecommunications, Inc.,	)
	)
Respondent	)

**REPLY TO RESPONSE  
OF BELL SOUTH TO  
MOTION TO STRIKE**

S. C. PUBLIC SERVICE COMMISSION  
**RECEIVED**  
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UNITED STATES

United Telephone Company of the Carolinas ("United") submits this reply to the Response of BellSouth Telecommunications, Inc. ("BellSouth") to Motion to Strike in the above matter. In support thereof, United would respectfully show as follows:

1. United agrees with BellSouth that United's motion seeks to strike portions of BellSouth's Answer and attachments on grounds that they constitute redundant, immaterial, and impertinent matter. As set forth in the motion, and as discussed further below, BellSouth's Answer contains information concerning understandings and opinions held by South Carolina Telephone Coalition ("Coalition") members of instruments having no basis for United's claim in this case. Significantly, BellSouth does not dispute that neither the Coalition nor any of its members were parties to, or participated in the development of, the South Carolina Depooling Guidelines ("Depooling Guidelines"), the document upon which United's claim against BellSouth is based. The

material pertaining to the Coalition has no substantial relationship to this controversy and should therefore be stricken from BellSouth's Answer.

2. For the reasons stated in the Motion to Strike, information from persons without any knowledge of or involvement with the negotiation, execution, or implementation of the agreement giving rise to United's claim is completely irrelevant to the present controversy between United and BellSouth. The fact that the Depooling Guidelines were negotiated and entered into contemporaneously with agreements to which the Coalition was a party does not make the Coalition members' understanding of those other agreements in any way relevant to this case. Accordingly, BellSouth's assertion that "United's position is that the Commission should eliminate highly relevant information which is critical in order for BellSouth to respond to United's Complaint," *see* BellSouth's Response at 2, is completely erroneous.

Consistent with paragraph 2 of the South Carolina IntraLATA Depooling Plan ("Depooling Plan"), the toll providers — BellSouth, United, and GTE South, Inc. ("GTE") — entered into a separate agreement (the Depooling Guidelines) to establish compensation among them "for all intraLATA traffic terminated in their respective service areas." *See* Attachment C to United's Complaint, Exhibit A, Page 1 of 9. Section 13 of the Depooling Guidelines specifically sets out the compensation provisions for ACP traffic applicable to BellSouth, United, and GTE. Accordingly, United is not "attempting to ignore the prior related work done on the depooling issues in the previous two documents," as BellSouth contends, *see* BellSouth's Response at 2, but is giving effect to each of the instruments entered into by BellSouth and United. *See Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977) (construing contemporaneous instruments together means that provisions in one instrument limiting, explaining, or otherwise

affecting the provisions of another will be given effect between the parties so that the whole agreement may be effectuated).

3. As noted above, United's Complaint in this matter gives effect to the provisions of all the documents entered into by the parties. By contrast, BellSouth ignores specific provisions of the Depooling Guidelines that govern compensation for ACP traffic involving BellSouth, United, and GTE. Thus, it is BellSouth and not United who is looking at the documents "separately in a vacuum." *See* BellSouth's Response at 2.

4. United's reliance on Section 13 of the Depooling Guidelines is not inconsistent with either the Depooling Plan or the ACP Principles. Following the plain language of Section 13 of the Depooling Guidelines to determine the compensation for ACP traffic terminated by BellSouth, United, and GTE to each other results in a consistent and logical application of all three documents. BellSouth, however, would have the Commission interpret and apply these documents in a manner that produces inconsistencies, an outcome prohibited by law. *See Klutts Resort Realty, supra.*<sup>1</sup>

5. BellSouth suggests that the Coalition companies have an interest in these proceedings because Section 3 of the Depooling Guidelines makes reference to other local exchange carriers ("LECs") who subsequently become toll providers. Section 3 states, in part, that "[t]he LECs that become toll providers shall operate under the same guidelines as delineated herein." *See* Attachment A to United's Complaint, Page 2 of 9. This provision may not be construed, however, to bind

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<sup>1</sup> It should be noted that the quotation from the second paragraph of the Depooling Guidelines, found on page 3 of BellSouth's Response, states that the Depooling Guidelines are intended to be consistent with "the limited intraLATA competition" contemplated in Dockets No. 92-182-C, 92-183-C, and 92-200-C. These dockets "established" the Depooling Guidelines in the same sense as they "established the Depooling Plan and ACP Principles . . . ." *See* BellSouth's Response at 3.

Coalition companies who are not parties to the Depooling Guidelines. *See Drafts v. Shull Sausage Co.*, 276 S.C. 52, 275 S.E.2d 577 (1981) (since insurance company was not a party to the original contract between an employer and its employee, it owed no duty or obligation thereunder). Certainly, the opinions of parties who did not participate in the negotiation or drafting of the Depooling Guidelines are irrelevant and immaterial to their proper construction and application to the parties who engaged in those negotiations.<sup>2</sup>

6. United objects to BellSouth's mischaracterization of United's motive for moving to strike portions of BellSouth's Answer and exhibits. United's motion is not intended to "silenc[e] . . . the testimony of relevant witnesses," *see* BellSouth's Response at 4, but to eliminate irrelevant and immaterial matter from the pleadings on file in this proceeding.

7. United submits that the requirement in the Commission's Rules of Practice and Procedure that answers "advise fully and completely the Commission and any party as to the nature of the defense," 26 S.C. Code Ann. Regs. 103-837(A)(1)(1981), does not allow BellSouth to present material that is irrelevant to that defense. BellSouth incorrectly contends that general language in the ACP Principles, designed to address the concerns of the Coalition, supersedes specific provisions in the Depooling Guidelines governing compensation for ACP traffic between BellSouth and United. This incorrect contention cannot be supported by allegations and opinions of persons who did not participate in the negotiation or execution of the controlling document. Moreover, even if BellSouth were correct that the ACP Principles apply to the exclusion of specific language in the Depooling

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<sup>2</sup> If these other LECs really had an interest in the proceedings, as BellSouth contends, they would be expected to have intervened in order to protect that interest. Although United's Complaint has been pending for over five months, neither the Coalition nor any of its members have sought intervention in this proceeding.

Guidelines, the understandings and opinions of Coalition members regarding the ACP Principles still would be irrelevant since United is not seeking compensation from BellSouth under the ACP Principles.

8. BellSouth improperly relies upon Rules 103-870 and 103-873 of the Commission's Rules of Practice and Procedure, both of which explicitly pertain to the introduction of evidence and not the content of pleadings. *See* 26 S.C. Code Ann. Regs. 103-870 & -873 (1981). BellSouth also improperly criticizes United because it did not "present any evidence at all regarding the ACP Principles or the Depooling Plan." *See* BellSouth's Response at 4-5. This argument exhibits a misunderstanding of the purpose of pleadings, which is not to present evidence but to set forth allegations "of the facts such person is prepared to present to the Commission ...." 26 S.C. Code Ann. Regs. 103-830(C)(1981); *see also South Carolina Nat'l Bank v. Joyner*, 289 S.C. 382, 346 S.E.2d 329 (Ct.App. 1986) (principal purpose of pleadings is to inform of legal and factual positions required to be met on trial). In any event, as discussed above, details about the ACP Principles and Depooling Plan are simply not relevant to this proceeding. For that reason, United's motion to strike matter regarding the Coalition's understanding of those agreements should be stricken from BellSouth's pleading.<sup>3</sup>

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<sup>3</sup> It should be noted that the affidavits attached to BellSouth's Answer, even if relevant, would not constitute admissible evidence. *See South Carolina Nat'l Bank v. Central Carolina Livestock Market, Inc.*, 289 S.C. 309, 345 S.E.2d 485(1986) (South Carolina Supreme Court has condemned use of affidavits to determine issues of fact); *Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 408 S.E.2d 213 (1991)(submission of affidavits does not satisfy right to cross-examine adverse witnesses).

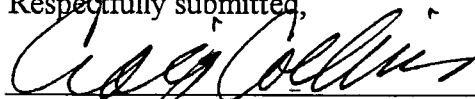
## CONCLUSION

BellSouth's Answer attempts to introduce irrelevant and immaterial matter into this proceeding. As noted in the Motion to Strike, the Complaint in this proceeding seeks a determination that compensation is due United from BellSouth pursuant to a particular section of the Depooling Guidelines — a document entered into by only BellSouth, United, and GTE. BellSouth's defense apparently is that this section, although plainly applicable, does not control this controversy because of language in a separate document (the ACP Principles) to which the Coalition was also a party. BellSouth's Answer goes further, however, and includes allegations and opinions concerning Coalition members' understanding of that other document. These allegations and opinions are entirely irrelevant to the issue of whether United is entitled to compensation from BellSouth under the Depooling Guidelines. In short, the Commission can, and should, decide the viability of United's claim under the Depooling Guidelines without considering Coalition members' understanding of the ACP Principles.

WHEREFORE, having fully replied to the Response of BellSouth to Motion to Strike, United requests that its motion be granted.

March 1, 2000

Respectfully submitted,



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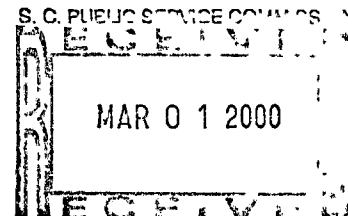
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**THE PUBLIC SERVICE COMMISSION OF**  
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	)	
Complainant	)	
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v.	)	
	)	
BellSouth Telecommunications, Inc.,	)	
	)	
Respondent	)	
	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one copy each of the **Reply to Response of BellSouth to Motion to Strike** on behalf of United Telephone Company of the Carolinas, in the above matter via hand delivery to the address below:

Caroline N. Watson  
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Tracy W. Barnes

This 1st day of March, 2000  
Columbia, South Carolina  
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